

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MARGARITA HERNANDEZ, individually) No.
and as executor of the Estate of)
RICARDO HERNANDEZ)
Plaintiff,) COMPLAINT FOR DAMAGES
(JURY DEMAND)
v.)
FEDERAL WAY, BLAKE LOSVAR, TANNER)
PAU AND SEVERAL JOHN AND JANE DOE)
OFFICERS)
Defendants.)

I. INTRODUCTION

On October 8, 2016, Ricardo Hernandez was shot several times and killed by two Federal Way Police Officers. At the time of the shooting, Ricardo Hernandez was approximately 23 feet away from the police officers that killed him. There were no other people in close proximity to Ricardo at the time he was killed. Ricardo

1 Hernandez was not a danger to others at the time that he was shot
2 six times by the defendant officers. At the time of his death,
3 Ricardo Hernandez was attempting to comply with law enforcement
4 commands.

5 Federal Way Police officers initially arrived at Ricardo's home
6 as a result of a 911 call that was made by Margarita Hernandez,
7 Ricardo's mother. During the 911 call a variety of family members
8 made it clear that Ricardo Hernandez was experiencing some form of
9 mental health episode. Dispatch informed the officers that were
10 responding to the home that Ricardo Hernandez was experiencing
11 mental health difficulties. Dispatch also informed the responding
12 officers that the Hernandez family was hiding in one of the rooms in
13 the house with the door closed. They believed that Ricardo was on
14 the other side of the door with knives. Upon arrival, Federal Way
15 police officers were able to assist all of the family members out of
16 the home. No one was physically injured by Ricardo Hernandez.

17 The officers were well aware and clearly informed by the
18 Hernandez family that the only person that remained in the home was
19 Ricardo Hernandez. The family further informed law enforcement that
20 Ricardo Hernandez did not possess any firearms.

21 Several Federal Way Police Officers quickly created a perimeter
22 around the Hernandez home. All of the Federal Way Police Officer's
23 that were surrounding the home had their assault rifles trained at
24 the home. None of the officers that were at the scene had a .40 mm
25 less lethal option at the time that the home was surrounded. At no

1 point did any Federal Way Law enforcement officers attempt to
2 contact any mental health professionals to assist with this matter.
3 No negotiators were used to communicate with Ricardo Hernandez who
4 was clearly experiencing mental health distress. Ricardo
5 Hernandez's uncle, who arrived at the scene, attempted to get the
6 officers to allow him to have a conversation with Ricardo.
7 Ricardo's uncle was sure that he could have helped to relieve his
8 nephew's anxiety. The officers did not allow the uncle to attempt
9 to talk to Ricardo.

10 The Hernandez family could clearly see where the officers that
11 killed Ricardo Hernandez were standing at the time of the shooting.
12 Officer's Losvar and Pau were standing with their backs near a fence
13 toward the back of the home with their riffles pointed at the back
14 porch in the minutes prior to the shooting. Ricardo's mother
15 personally witnessed officers Pau and Losvar fire several shots.

16 Officer's Losvar and Pau claim that prior to the shooting
17 Ricardo Hernandez peeked out of the back door of the home. Officer
18 Losvar claims, that at one point, he challenged Ricardo Hernandez to
19 come out of the home. At another point, officer Losvar claims that
20 Ricardo Hernandez was standing on the back porch with two to four
21 knives in his hand. Officers Losvar and Pau have claimed that they
22 instructed Ricardo to put the knives down on the porch. Ricardo
23 Hernandez then placed the knives down on the porch as instructed by
24 officers.

1 Officer's Losvar and Pau claim that Ricardo lunged at them with
2 knives in hand. The physical evidence does not match the claims of
3 Officer's Losvar and Pau. The physical evidence suggests that
4 Ricardo Hernandez was placing the knives on the porch as instructed
5 and that the majority of his body was still inside the home at the
6 time that the officers began to shoot him.

8 II. PARTIES

9 2.1 Plaintiff Margarita Hernandez. Margarita Hernandez is a
10 resident of King County and the mother of the decedent, Ricardo
11 Hernandez. Margarita Hernandez is the executor of the estate
12 of Ricardo Hernandez. Margarita Hernandez is also filing this
13 complaint in her personal capacity.

14 2.2 Defendant Blake Losvar. Blake Losvar is a police officer
15 employed by the City of Federal Way. At all times relevant,
16 Blake Losvar was employed as law enforcement by the Federal Way
17 Police Department and was acting within the course and scope of
18 his employment with the City of Federal Way and under color of
19 law. All Blake Losvar's acts alleged herein were taken for
20 himself, and by and for the benefit for the City of Federal Way
21 and his marital community.

22 2.4 Defendant City of Federal Way. Defendant City of Federal Way
23 (City) is a municipality located within the State of Washington
24 and is responsible for the actions and activities of employees
25 of the Federal Way Police Department when Federal Way Police

1 officers are acting within the course and scope of their
2 employment. The civil rights violations delineated herein were
3 proximately caused by tis customs, policies and usages.

4 2.5 Defendant Tanner Pau. Tanner Pau is a police officer employed
5 by the City of Federal Way. At all times relevant, Tanner Pau
6 was employed as law enforcement by the Federal Way Police
7 Department and was acting within the course and scope of his
8 employment with the City of Federal Way and under color of law.
9 All of Tanner Pau's acts alleged herein were taken for himself,
10 and by and for the benefit for the City of Federal Way and his
11 marital community.

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14 **III. JURISDICTION AND VENUE**

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16 3.1 Jurisdiction. Jurisdiction in this Court is based on the
17 existence of a federal question pursuant to 28 U.S.C. Section §
18 1331 and 1343, in that Plaintiff assert claims for deprivation
19 of civil rights under 42 U.S.C. § 1983 for violation of the
20 Fourth Amendments to the United States Constitution.

21 3.2 Venue. Venue for this action is appropriate in this Court
22 because the events giving rise to the claims asserted herein
23 occurred in the Seattle Division of this district and because
24 the plaintiff and defendants reside in this district.

IV. FACTS

4.1 The City of Federal Way is a municipal corporation in King County Washington. The City of Federal Way operates the Federal Way Police Department, which carries out traditional law enforcement activities in and around the City of Federal Way. The City of Federal Way employed the defendant officers Losvar and Pau as Federal Way Police Officers on October 8, 2016.

4.2 On October 8, 2016, 19 year old Ricardo Hernandez was experiencing a mental health crisis. As a result of the mental health crises that Ricardo Hernandez was experiencing, his mother, Margarita Hernandez called 911.

4.3 Defendant Losvar was working as a Federal Way Police Officer on October 8, 2016. Defendant Losavar was dispatched to the home that Ricardo Hernandez and his family shared. Through dispatch, Defendant Losvar was informed that Ricardo Hernandez was experiencing a mental health crisis and that he may be in possession of knives. Defendant losvar was also informed by dispatch that the other members of the Hernandez household were in a different room than Ricardo with the door closed for safety.

1 4.3 Defendant Pau was working as a Federal Way Police Officer on
2 October 8, 2016. Defendant Pau was also dispatched to the home
3 that Ricardo Hernandez and his family shared. Through dispatch,
4 Defendant Pau was informed that Ricardo Hernandez was
5 experiencing a mental health crisis and that he may be in
6 possession of knives. Defendant Pau was also informed by
7 dispatch that the other members of the Hernandez household were
8 in a different room than Ricardo with the door closed for
9 safety.

10 4.4 Defendant Losvar was the first Federal Way Police Officer to
11 arrive at the Hernandez home. Upon arrival, Defendant Losvar
12 was able to assist all of the people in the Hernandez home out
13 of the house with the exception of Ricardo Hernandez.

14 4.5 Ricardo Hernandez's family members explained to the defendant
15 officers that Ricardo was now the only person in the home.
16 Ricardo's family further explained that Ricardo did not possess
17 any firearms.

18 4.6 Several Federal Way Police Officers arrived at the Hernandez
19 home and created a perimeter around it.

20 4.7 Several Federal Way Police Officers had their fire arms trained
21 on the Hernandez residence. Every entrance and exit of the
22 Hernandez home was covered by a Federal Way Police Officer.

23 4.8 None of the Federal Way Police Officers that formed a perimeter
24 around the Hernandez home had a .40 mm less lethal option.
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1 4.9 At no point did any Federal Way Police Officer attempt to
2 contact a mental health professional to assist in addressing
3 Ricardo Hernandez's mental health crisis.

4 4.10 The Federal Way Police department did not have anyone attempt
5 to negotiate with Ricardo Hernandez who was experiencing a
6 mental health crisis.

7 4.11 The Federal Way Police Department did not establish a line of
8 communication with Ricardo Hernandez during the time period
9 when he was alone in the home.

10 4.12 Defendants Pau and Losvar were part of the perimeter that was
11 formed around the Hernandez home.

12 4.13 Defendants Pau and Losvar had their riffles trained on the back
13 porch of the Hernandez home.

14 4.14 Margarita Hernandez, her brother and other family members that
15 lived in the home were positioned in a place where they could
16 see Defendants Pau and Losvar as their riffles were trained on
17 the back porch of the Hernandez home.

18 4.15 The Hernandez family members that could see where Defendants
19 Pau and Losvar were located at the time that the defendants
20 began to shoot at Ricardo Hernandez.

21 4.16 Prior to the shooting, Ricardo's uncle begged the Defendant
22 Officers to give him a chance to talk to Ricardo. Ricardo's
23 Uncle believed that he could have helped to relieve Ricardo's
24 anxiety. Ricardo's uncle did get not get the opportunity to
25 speak with Ricardo. The Defendant officers shot and killed

1 Ricardo Hernandez within a few minutes of the family leaving
2 the home.

3 4.17 Defendant Losvar claims that Ricardo Hernandez peeked his head
4 out of the back door a couple of times during the time that he
5 had his riffle trained on the porch and back door of the home.
6 Defendant Losvar has previously indicated that he challenged
7 Ricardo Hernandez to come out of the Hernandez home.

8 4.18 Defendants Losvar and Pau claim that Ricardo Hernandez came out
9 onto the back porch with knives. Defendants Losvar and Pau
10 also claim that they instructed Ricardo Hernandez to put the
11 knives down. Defendants Losvar and Pau claim that Ricardo
12 Hernandez lunged at them causing them to shoot him several
13 times.

14 4.19 Margarita Hernandez watched in horror as Defendants Losvar and
15 Pau fired several shots that killed her son.

16 4.20 Defendants Losvar and Pau's claims are inconsistent with the
17 physical evidence at the scene. Knives that were photographed
18 on the porch appear to have been set in a very even line.
19 Clearly, if someone were shot while holding knives they would
20 not all fall in a perfect line. Further, the placement of the
21 bullets in Ricardo's body coupled with the location of the body
22 would suggest that Ricardo Hernandez was likely closer to being
23 inside the house and was not involved in lunging at the
24 Defendants Losvar and Pau. The bullet strikes that were on the
25 Hernandez home indicate that Ricardo was closer to being inside

1 the home rather than lunging at the defendant officers. After
2 Ricardo Hernandez was shot and killed, officers observed
3 Ricardo Hernandez's body mostly inside the home with just his
4 feet sticking out of the doorway. Though there were other
5 Federal Way Officers in position to shoot at Ricardo Hernandez
6 if he had been a danger to others, no other Federal Way
7 Officers other than the defendant officers fired shots at
8 Ricardo.

9 4.21 Members of the Hernandez family measured where Defendants Pau
10 and Losvar were standing to the door/porch where Ricardo
11 Hernandez was shot and killed. Defendants Pau and Losvar shot
12 Ricardo Hernandez from approximately 23 Feet away.
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16 V. CAUSES OF ACTION

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18 5.1 First Cause of Action. Margarita Hernandez, the Personal
19 representative of the Estate of Ricardo Hernandez asserts all
20 available claims under 42 U.S.C. § 1983 for the deprivation of
21 Ricardo Hernandez's constitutional rights under the Fourth
22 Amendment to the United States Constitution.

23 5.2 Second Cause of Action. Margarita Hernandez, personally, as
24 mother of Ricardo Hernandez, possesses her own independent
25 claims under 42 § 1983 for the deprivation of the society and

1 companionship of her son in violation of the Fourteenth
2 Amendment of the United States and asserts those claims herein
3 on her own behalf.

4 5.3 Third Cause of Action. Margarita Hernandez, the personal
5 representative of the estate of Ricardo Hernandez asserts a
6 claim of assault against all defendants.

7 5.4 Fourth Cause of Action. Margarita Hernandez, the personal
8 representative of the estate of Ricardo Hernandez asserts a
9 claim of Negligence against all defendants.

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11 5.5 Fifth Cause of Action. Margarita Hernandez, the personal
12 representative of the estate of Ricard Hernandez asserts a
13 claim of for the tort of outrage against all defendants.
14 Margarita Hernandez asserts this claim personally and on behalf
15 of the estate.

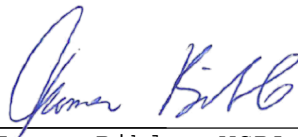
VI. REQUEST FOR JURY DEMAND

The plaintiffs formally demands that this case be heard by a jury.

WHEREFORE, Plaintiff pray for the following relief:

1. Damages and punitive damages in an amount to be proven at trial. Plaintiff seeks punitive damages against all defendants;
2. For reasonable attorney's fees and costs;
3. Attorneys' fees, costs and prejudgment interest incurred in pursuing this action as provided in 42 § 1988;
4. Compensatory damages in an amount to be proven at trial, sufficient to compensate all plaintiffs for all damages including but not limited to, damages for pre-death pain and suffering, damages for loss of enjoyment of life, loss of
3. For such other and further relief as the Court deems just and equitable.

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2 Dated this 7th day of October 2018,
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6 James Bible, WSBA # 33985
7 Attorney for Plaintiff
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9 s/Jesse Valdez

10 Jesse Valdez, WSBA #35378
11 Attorney for Plaintiff
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13 s/ Leah Altaras

14 Leah Altaras, WSBA # 39266
15 Attorney for Plaintiff
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